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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,796	11/14/2001	Heinz Focke	20605.007US	3093

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EXAMINER

TRUONG, THANH K

ART UNIT PAPER NUMBER

3721

DATE MAILED: 10/21/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/990,796

Applicant(s)

FOCKE ET AL.

Examiner

Thanh K Truong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 2-5 and 7-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Species (1) and Subspecies (a), claims 1 and 6, in Paper No. 9, is acknowledged. The traversal is on the ground(s) that "there is a commonality of invention in each of the independent claims", and all of the claims are directed to a common invention. This is not found persuasive because the claimed invention directed to patentably distinct species and subspecies as cited in the previous Office Action, Paper No. 8.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 2-5 and 7-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species and Subspecies, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 1, the phrase "in particular" is vague and indefinite, because it does not clearly set forth the metes and bounds of the claimed invention. It is unclear which is being claimed; the "packs" or the "cigarette packs"?

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Similarly, the "and/or" in claim 1, line 10, is vague and indefinite, because it is unclear which is being claimed; "and" or "or"?

Claim 1, line 7, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Similarly, the words "etc." in claim 1, line 8 & 13, are vague and indefinite.

Claim 6, line 3, the phrase "it being possible" is vague and indefinite, because it does not positively recite the claimed invention. It is unclear whether - it is or it is not.

Similarly, the "and/or" in claim 6, line 15, is vague and indefinite, because it is unclear which is being claimed; "and" or "or"?

Claim 6, line 7, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Similarly, the words "etc." in claim 6, line 11 & 14, are vague and indefinite.

5. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Focke et al. (5,931,292) in view of Terranova (5,470,300).

Focke discloses an apparatus and a process for producing cigarette packs of the hinge-type, with an outer wrapper made of transparent film and with a tear-open strip applied to the outer wrapper comprising: a continuous material strip for producing the tear-open strip 22; the precise position of the tear-open strip 22 on the film web 27 (figures 1-4) and a severing cut for severing the blanks with tear-open strip from the film web (figures 2 and 4).

Focke discloses the claimed invention, but did not expressly disclose the printed-mark on the tear-open strip and the sensor – printed-mark reader.

Terranova discloses an apparatus and a process comprising: printed-marks 26 are printed on the web 12; a sensor 28 and a controller 30 – evaluation unit. Sensor 28 detects each of the printed-mark 26 and sends a detection signal to the controller 30. The evaluation unit uses the detection signal to control the web registration system, servomotor, drive motor and cutting operation (figures 1 & 2). Therefore, it would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to/modify Focke apparatus by incorporating the printed-marks on the web material, sensor and the evaluation unit as taught by Terranova to provide a faster speed of production and more accurate web registration system.

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Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thanh K Truong whose telephone number is (703) 605-0423. The examiner can normally be reached on Mon-Thurs from 8:00 AM to 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 872-9301.

tkr
October 13, 2003



Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700